IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 284 OF 2005

AND

CRIMINAL REVISION APPLICATION NO. 285 OF 2005

Mr. Arun Merchant Proprietor of Shreeji Machinery Corpn. having his Office and resident at 262, Laxmi Vihar Building, 3rd Floor, Walkeshwar, Mumbai - 400 006	]]]]]]	Applicant (Original accused) (In both Revision Aplications)
Versus		
1) Devidas Sadashiv Yeole, Proprietor of Walkeshwar Gas Services, having its Office at Laxmi Vihar Building, Walkeshwar, Mumbai - 400 006 2) The State of Maharashtra	]]]]]]]	Respondents (In both Revision Applications)

Mr. Prakash Naik for the Applicant.

Mr. Prakash S. Chande for Respondent No. 1.

Mr. S.R. Shinde, A.P.P. for the State.

CORAM : ABHAY S. OKA, J.

DATE : 28TH AUGUST, 2006

P.C.

1) Heard Advocates appearing for the parties. The first Respondent in both the Revision Applications is the complainant who filed two complaints under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as "the said Act"). The

Applicant in both the Revision Applications is the same who has been convicted by the learned Magistrate and order of conviction and sentence has been confirmed in the appeal.

2) According to the case of the first Respondent, he had advanced a sum of Rs.4,00,000/- to the Applicant. A cheque in the sum of Rs. 1,00,000/- was issued by the Applicant to the first Respondent towards repayment of said amount. The said cheque was dishonoured. The complaint which is subject matter of Criminal Revision No. 284 of 2005 is based on the dishonour of the said cheque in the sum of Rs.1,00,000/-. According to the case of the first Respondent, the Applicant had issued three more cheques in the sum of Rs.1,00,000/- each towards repayment of amount of Rs.4,00,000/- allegedly advanced by the first Respondent to the Applicant. The said three cheques were dishonoured. The said three cheques are the subject matter of the complaint out of which Criminal Revision Application no. 285 of 2005 arises.

3) In both the complaints, the applicant has been convicted. In the first complaint, the Applicant has been directed to undergo Simple Imprisonment for a terms of three months for the offence punishable under Section 138 of the said Act and has been directed to pay compensation of Rs.1,25,000/-. In default of payment of compensation, the Applicant has been

directed to undergo Simple Imprisonment for one month. In the second complaint, the Applicant has been directed to undergo Simple Imprisonment for a term of three months. He has been directed to pay compensation of Rs.3,75,000/- to the first Respondent. In default, he has been directed to undergo Simple Imprisonment for one month.

4) Appeals were preferred by the Applicant to the Sessions Court. As stated earlier, the appeals have been dismissed. While dismissing the appeals, the learned Additional Sessions Judge has noted that from time to time, adjournment was sought by the Applicant on the ground that he wants to make payment to the first Respondent in full and final settlement of his claim. The learned Additional Sessions Judge has noted that repeatedly time was granted to the Applicant. He has noted that on 18/5/2005, 20/5/2005, 24/5/2005, 27/5/2005, 6/6/2005, 8/6/2005, 13/6/2005, 2/7/2005, 12/7/2005, 18/7/2005 and 18/8/2005 adjournments granted to the Applicant to enable him to clear the dues. However, the Applicant has not cleared the dues of the first Respondent.

5) On 29th August 2005 when these Criminal Revision Applications came up before this Court, the Applicant’s Advocate stated that the Applicant was ready and willing to settle the entire dispute with the first Respondent. On that day, cash amount of

Rs.80,000/- was handed over by the Advocate for Applicant to the Advocate for the first Respondent. Therefore, Applicant was ordered to be enlarged on bail.

6) On 13th September 2005, the Applicant and the first Respondent filed Consent Terms. The Consent Terms provided that the Applicant will pay a sum of Rs.4,40,000/- in full and final settlement in eleven monthly instalments of Rs.40,000/- each. To ensure that the Applicant makes payment of all instalments, on 13th September 2005, Rule was issued. While issuing Rule, this Court noted the statement made by the Respondent No. 1 that if agreed amount was paid by the first Respondent, he will not have any objection for compounding the offence.

7) On 16th August, 2006, when the Revision Application appeared before me, it was pointed out that the Applicant has not complied with the stipulations in the Consent Terms and in fact cheques issued by the Applicant in accordance with the consent terms have been dishonoured. With a view to give one more opportunity to the Applicant for making payment of the entire amount payable to the first Respondent, the Revision Applications were kept today with notice to the Applicant that if there was no amicable settlement between the parties, the Revision Application will be heard on merits. Till today there is no settlement.

8) Shri Naik appearing for the Applicant has invited my attention to the deposition of the first Respondent in both the complaints. He pointed out that in the first complaint, the first Respondent has stated that on 31st July 2000, the Applicant had given him a cheque in the sum of Rs.1,00,000/-. He invited my attention to the cross-examination of the first Respondent in the said complaint. He pointed out that in the cross examination the first Respondent stated that the cheque was given by the Applicant to him in June 2000. He also pointed out that the first Respondent stated in the cross-examination that the Applicant himself had come to his Shop and had given a cheque of Rs.1,00,000/-. He admitted that the statement made in the examination-in-chief that cheque of Rs.1,00,000/- was given on 31st July 2000 was not correct. He stated that it was a post dated cheque. He also invited my attention to the evidence of the first Respondent in the second complaint and submitted that the first Respondent himself was not sure as to when and in what manner the cheques were handed over by the Applicant to the first Respondent. He submitted that in fact the cheques on the basis of which complaints were filed were given by the Applicant to his friend Shri. Kamlesh Parikh. He pointed out that the cheques were issued to Shri. Kamlesh Parikh as a security for "Bhishi transaction" without putting the name of the payee and date. He submitted that

inconsistency in the evidence of the first Respondent clearly shows that the case made out by the first Respondent regarding liability of the Applicant to pay Rs.4,00,000/- was not genuine. He submitted that the evidence of the first Respondent himself was sufficient to rebut the presumption under Section 139 of the said Act. Shri. Naik lastly submitted that the Applicant has already paid a sum of Rs.2,00,000/- and thus the sentence deserves to be reduced.

9) I have considered the submissions. It must be noted here that the Applicant entered the witness box and contended that the cheques in question were given by him to his friend Shri. Kamlesh Parikh in presence of his another friend Shri. Ketan Gandhi. To the notice issued by the first Respondent before filing of the complaint, the Advocate for Applicant replied on 25th August 2000. In the said reply a vague contention was raised that the Applicant had given the cheques to another party. It is pertinent to note that in the said reply, names of Shri Kamlesh Parikh or Shri. Ketan Gandhi are not at all disclosed. The case of the Applicant made out at the time of trial appears to be that he had drawn the cheques, but the same were handed over Shri. Kamlesh Parikh. The Courts below have observed that the Applicant failed to examine said Kamlesh Parikh. Similarly it is his case that the cheques were handed over by him to Shri. Kamlesh Parikh in presence of his another friend Shri. Ketan

Gandhi. The said Ketan Gandhi is also not examined.

10) The Courts below have held that the cheques were issued by the Applicant which have been admittedly dishonoured and there is no dispute about service of statutory notice of demand. The only question was whether presumption under Section 139 of the said Act was rebutted by the first Respondent. Considering the vague stand taken by the Applicant in the reply to the Notice, and considering his failure to examine said Shri. Kamlesh Parikh, the Courts below have rightly not accepted that presumption under Section 139 of the said Act is rebutted by the present Applicant.

11) It must borne in mind that the scope of a Revision Application is very limited. Normally it is not permissible to re-appreciate the evidence in a Revision Application. However, since submissions were made on the basis of oral evidence of the parties, I have perused the notes of evidence. I find that the conclusions which are drawn by the Courts below are consistent with the oral and documentary evidence on record. By merely pointing out certain inconsistent statements made by the first Respondent as regards the date of receipt of the cheques, it cannot be said that the presumption is rebutted.

12) In my view, there is no infirmity in the Judgments and Order passed by the Courts below. Shri.

Naik made a prayer that the sentence may be reduced as a sum of Rs.2,00,000/- and more has been paid by the Applicant. It must be noted here that some amount could be paid by the applicant only because indulgence was shown by adjourning the hearing of the appeals and Revision Applications from time to time. This Court entertained the Revision Application only because the Applicant offered to settle the dispute with the first Respondent and in fact Consent Terms were filed by the parties. After filing the Consent Terms, the cheques issued by the Applicant in terms of the Consent Terms have been admittedly dishonoured. Therefore this is not the case where leniency should be shown to the Applicant.

13) There is no merits in the Revision Applications and same are dismissed.

14) At this state Shri. Naik appearing for the Applicant states that the Applicant is suffering from certain ailments and therefore, time of eight weeks be granted to surrender. Considering the facts and circumstances of the case, time of six weeks is granted to the Applicant to surrender.

(ABHAY S. OKA, J.)